

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date: **July 12, 2006**

Time: 8:00am

Place: **Room 4112, State Office Bldg**

Members

(Attendees =X)

Commission Members

x Chairperson, Joyce W. Clark, *Washington* x Darwin L. Johnson, *Wasatch*
x David M. Lattin, *Salt Lake* x Glen W. Roberts, *Utah* x R. Curt Webb, *Cache*

Department Staff

x John E. "Mickey" Braun, Jr. x Perri Babalis x Jilene Whitby x Darrel Powell
Ass't Commissioner *AG Legal Counsel* *PIO/Recorder* *Dir. Market Conduct*

x Gerri Jones x Sheila Curtis Brad Tibbitts x Gale Lemmon
MC Examiner *MC Examiner* *Dir. Life & P&C* *AG Prosecutor*

Public

Joseph K. McPhie

James Seaman

Minutes

I. Welcome and Introductions by Joyce Clark, Chair

Began meeting at 8:05 a.m.

II. Adoption of Minutes of Previous Meeting

Glen made a motion to adopt the minutes without change and Darwin seconded it. The vote was unanimous in its favor.

III. Review & Concur with Licensee Report

Curt made a motion to approve the report and Darwin seconded it. The vote was unanimous.

IV. Review & Concur with Enforcement Case Report

Gerri provided a one page report entitled "2005 Annual Report and Controlled Business Enforcement Actions." The report contains names of agencies fined for failing to submit two annual title reports on time. The fine increases each year they are late. Mickey is writing legislation that would dedicate money from fines for department training. Darwin said a number of the agencies listed have the wrong address. Gerri said that if they hadn't been reported they could be fined for not doing so. David made a motion to concur with the report and Glen seconded it. The vote was unanimous.

V. Old Business

• Report Regarding the Liaison Committee Meeting / Glen

- Members of the committee requested that Gerri or Sheila attend in the future.
- It was not clear if the 1% reserve is to come from the title premiums only or the gross income? Gerri said it is 1% of premium plus endorsements. Glen said it needed to be reemphasized.
- ULTA is preparing legislation about searching documents that are not being recorded in the Tract Index. Paul Newton, ULTA legislative representative said; "if the document is not put in the Tract Index then it would not be shown in the chain of title."
- ULTA wants to require an address and phone number on the lien. The Commission agreed this would be a good idea.
- Recon Trust Company is not licensed to do trustee business in Utah, however, it appears they are doing trustee business as a subsidiary of Wells Fargo. Gerri will investigate this.

- Title 31-1-17 talks about mechanic's liens. In one place it has a filing requirement of 90 days and in another 180 days. Which is right? Someone needs to correct this.
- Their next meeting is October 2, 2006.
- Joyce welcomed Joseph K. McPhie.
- **Number of Cases Open** / Mickey & Sheila
The department is working on 145 cases. Curt asked if the Commission could have a monthly report listing the number of newly opened cases, number in process and how old they are, and the number of actions completed during the month. Names should not be included. Darrel will provide this report at next month's meeting. The computer will not show the type of actions but it can be drawn from the files. Mickey had a report on enforcement actions, which included the names of the respondent's. He and Perri were not sure that it could or should be shared with the Commission. Perri thought they would need to go into a closed session to share it. Commission decided that Darrel's proposed report would be sufficient.
- **Can Missed Questions be Reviewed After Taking a Test?** / Mickey
Mickey scheduled to meet with the testing company but was unable to attend due to illness. This remains a pending issue.
- **Escrow Filing Rules R592-3 & 4 Update** / Mickey
Comment period ends today. Jilene will contact Commission members to see if you concur then put it into effect. A notice will be sent to agencies and individually appointed attorneys. The new rules will be enforceable 90 days from their effective date.
- **New Open Meetings Act** / Perri
Perri provided the required annual training on the new Open Meetings Act. The department is already complying with the new requirements. The agenda is being posted on the web, meetings are being recorded and minutes taken. Closed meetings must also be recorded. There are six criteria for having a closed meeting. Only one and maybe two apply to the Commission:
 1. to discuss the character of an individual; and
 2. to discuss litigation involving the title commission.
 No final action can be taken on anything that is not on the agenda. The presiding officer has the duty to be sure this training is provided annually. It is a Class B Misdemeanor to violate this act. If a Commission member wants to participate in the meeting electronically, the Commission must first establish guidelines by rule or resolution. Perri will draft a resolution for the next meeting. Darwin approved Perri drafting the resolution and Curt seconded it. The vote was unanimous in its favor.
- **31A-23a-407 Challenged as Unconstitutional** / Perri
This is currently in Federal court involving rehabilitation of Old Standard Life Insurance Company in Idaho. It is a multi-party suit in which Lawyers Title is challenging the constitutionality of 31A-23a-407. It is an equal protection issue. Perri is in contact with Steven Call from Ray Quinney & Nebeker, who is defending the statute. Perri is giving him information. The Commission does not need to do anything at this point. Perri will let them know if she needs them.
- **Fiduciary Rule**
 - Joyce asked Joseph McPhie if he had any objections to her sharing a letter from him to Vardell Curtis of the Washington County Board of Realtors regarding split closings. He did not object. Joyce said she met with Vardell. He is organizing a meeting at the Larry Miller Education Center at 9750 S. 300 W. in Sandy, July 20 at 10:30 a.m. The Commission is invited to attend. Curt and Glen will be there. The Realtor's Board would like to get involved even if it means changing the real estate purchase contract (REPC). Joyce encouraged everyone to attend that could. Joyce also met with local

legislators. They are willing to support the decision of this realtors' group. **Put on next month's agenda.**

- Joseph presented a letter of response from First American Title Insurance Agency Inc.
- Turned time over to Joseph.
 - He will email handouts to commission members.
 - Joseph said they decided to get involved in the "Split Closing" issue after being involved in a split closing where representative of the other party requested a copy of the deed before the funds were provided. The other party thought he was trying to ruin the deal. The deal finally closed. He contacted Vardell to explain what had happened. Vardell just happened to be going to a national meeting and asked Joseph to provide a presentation. He prepared a PowerPoint presentation explaining the deal and laws broken. Bill Hickman and Dave Clark were surprised that this was happening. Steve Erkhart wanted to see the law changed to prohibit split closings. Sam Samson, past president of the Realtor's Association, expressed support for the legislation. An attorney has been hired to prepare the legislation. A draft should be completed by this weekend. Joyce asked if the Commission and ULTA could review and give input before it goes to Steve. Glen asked if the legislation would amend or add to the law. Joseph did not know.
 - Joseph will be giving his PowerPoint presentation at a Utah Mortgage Lenders Southern Utah regional meeting in August. He said consumers and lenders do not seem to be aware of this situation. At the end of the presentation he has included a proposed solution to the problem. The solution allows the seller and buyer to select their title company. A single escrow agent is required to comply with regulations. He noted that HUD does not allow split escrows.
- Joyce distributed a document of her thoughts regarding split closings.
- Curt said that the issue with split closings is that one title company issues the policy and the other is expected to provide an insured closing protection letter on a policy they did not issue. How can they guarantee a policy they did not issue?
- Joseph said we don't have the ability to split escrows to comply with the law. Nevada does not allow split escrows.
- Curt asked if the title company of the buyer and lender usually end up being the escrow? What is the trend? Joseph said developers (sellers) usually negotiate the settlement agent. In Nevada 90 % of the transactions are directed by the seller. Perri asked how he proposed to have the buyer and seller choose? Joe said sellers normally care more than buyers about who they deal with. Nevada law allows the buyer to direct the deal but in reality the seller does. Gale asked if they direct the title or escrow? Joseph was not sure but would find out. He noted that Nevada does not have a state approved real estate purchase contract.
- Glen said the Commission's purpose should not be to decide who chooses. It should be to decide if there will be more than one settlement contract in a transaction. Joseph said the industry should dictate who directs.
- Curt said the rule should allow the buyer or seller to negotiate with whomever, but there must be one fiduciary to provide better control of money and documents.
- Gale said that by law, in 31A-23a-406, at least one of the policies purchased must be by whoever is doing the closing.
- Gerri said an escrow can't be split on a cash transaction where no policy is issued by the buyer's title agency.
- Curt: It should not matter who chooses, but whoever does the closing should issue a policy.
- Glen liked the original fiduciary rule draft and suggested they use it as the basis for the new proposed rule. All agreed.
- **Took a break** at 9:55a.m. Resumed at 10:10a.m.

- It was decided that Sheila would make the changes to the rule and Perri would review it.
- Mickey recommended that the department draft changes to the Authority, Scope and Purpose sections.
- In Subsection (1) of the Definition section "(54)" should be deleted.
- The group decided to address issues rather than each word of the rule.
- Curt and Glen thought the only thing missing was wording requiring one settlement agent. Glen proposed taking the split-closing wording from the revised draft. Curt said there was no need to say anything about splits. Just specify that each escrow must have one settlement agent to disperse funds. Glen made the motion to have Sheila add the wording regarding "one settlement agent" to the rule. Darwin seconded the motion. The vote was unanimous.
- Joseph suggested that Section 4, Subsection (2) of the Revised Draft change the word "settlement" to, "prior to recordation and disbursement."
- **Washington State's Language / Glen**
In Washington, title agencies file their rate reductions and allow only one agent to handle the transaction. If a transaction is done with one agent then rates are significantly reduced in the second transaction. The commission does not have authority to tell underwriters what rates to file.

VI. New Business

- **Insurable vs Marketable Title**
 - Gerri read an email she had received from an attorney who was purchasing property that had a clouded title, and was demanding that the title be made marketable, not just insurable.
 - Commission members agreed that agents or insurers are not under requirement to do a full search or to provide an abstract. A consumer would have to pay for that.
 - Curt: If a lien is against a title, is it a marketable title? It can be made marketable. The policy guarantees the title. Curt said it was a matter of looking until you find someone who is willing to insure the property.
- **Set Dates, Assignments & Prepare Outline for Escrow Responsibilities / Joyce**
Glen is getting lines of escrow on it and will then email it to the others.
- **Industrial Banks / Gerri**
Gerri had new information on industrial banks she shared with the Commission. Title Resources Guaranty Co., whose parent is Cendant, has made application for a Utah Certificate of Authority. Under the Gramm-Leach Bliley Act, industrial banks or their subsidiaries trump our controlled business statute, according to the attorney general's opinion. Being looked at on federal level.
- **Test Reviews / Joyce**
Joyce suggested Commission members participate in the review of title exam questions at the Embassy Suite Hotel July 27. Two had been invited.
- **Selection of New Chair for Commission**
Darwin suggested Joyce remain the chair.
Curt said that since Darwin only had a year to go on the Commission he should have a chance to be chair and so nominated him. Glen seconded the nomination. Darwin was elected as the 2006-2007 chairman by unanimous vote.

VII. Other Business from Committee Members

- Curt asked if ULTA should be asked to form a subcommittee to review the NAIC's insurer and producer model acts and then discuss with us. All agreed. Glen will ask Paul Newton if this can be done.
- Mickey will see to it that the Commission gets a copy of the Market Conduct Handbook.
- Gerri responded to Joyce's inquiry in the last meeting as to where Shanna Lobato was working. She is working in a non-title related business.

VIII. **Reminder:** Next Liaison Meeting is October 2.

IX. **Next Meeting**

Curt said he would be unavailable for the August meeting, and possibly the September meetings. David would not be available for the August 9 meeting. Perri noted that three members make a quorum. All agreed to move the August meeting to the 16th at 8 a.m.

X. **Adjourned at** 11 a.m.

Next Meetings

8:00 a.m.

~~January 11, 2006~~

~~July 12, 2006~~

~~February 8, 2006~~

August 16, 2006

~~March 2, 2006~~

September 13, 2006

~~April 12, 2006~~

October 11, 2006

~~May 10, 2006~~

November 8, 2006

~~June 14, 2006~~

December 13, 2006